

Docket No.: OGW-0333
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Akira Kuramori et al.

Application No.: 10/509,229

Confirmation No.: 1787

Filed: September 24, 2004

Art Unit: 3617

For: TIRE/WHEEL ASSEMBLY

Examiner: J. R. Bellinger

PETITION UNDER 37 C.F.R. §1.144

MS Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is a petition under 37 C.F.R. §1.144 requesting review of a Restriction Requirement mailed on July 6, 2005, and timely traversed within the Request for Reconsideration of Restriction Requirement under 37 C.F.R. §1.143 filed on August 2, 2005. The subsequent Office Action of October 13, 2005 includes an indication that the Restriction Requirement has been made FINAL.

Accordingly, this petition pursuant to 37 C.F.R. §1.144 is proper. See 37 C.F.R. §1.499.

The above-identified application is an application under 35 U.S.C. §371

The above-identified application was filed under 35 U.S.C. §371 and 37 C.F.R. §§1.494 or 1.495, being based upon international application No. PCT/JP03/009320, having an International filing date of July 23, 2003. Accordingly, M.P.E.P. §1893.03(d) provides that the **principles of unity of invention** are used to determine the types of claimed subject matter and the combinations of claims to different categories of invention that are permitted to be included in a single international or national stage patent application.

When making a lack of unity of invention requirement, the examiner must (1) list the different groups of claims and (2) explain why each group lacks unity with each other group (i.e., why there is no single general inventive concept) specifically describing the unique special technical feature in each group. M.P.E.P. §1893.03(d).

(1) List the different groups of claims:

The Restriction Requirement of July 6, 2005 asserts an existence of the following independent and distinct inventions:

An alleged Group I, claim(s) 1-3: drawn to Figures 1-2; a run-flat support member composed of an annular support surface shell with elastic rings for supporting the shell on a rim.

An alleged Group II, claim(s) 4-6: drawn to Figures 3-4; a run-flat insert with a support surface mounted in a rim well.

(2) Explain why each group lacks unity with each other group:

M.P.E.P. §1893.03(d) further explains that a group of inventions is considered linked to form a single general inventive concept where there is a technical relationship among the inventions that involves at least one common or corresponding special technical feature. The expression “special technical feature” is defined as meaning those technical features that define the contribution which each claimed invention, considered as a whole, makes over the prior art.

In particular, the Restriction Requirement of July 6, 2005 contends that the inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT 13.2, they lack the same or corresponding special technical features for the following reasons. The inventions each have unique physical structures.

Specifically, the Restriction Requirement contends that invention I is a run-flat member formed from a spring steel annular member with elastic rings for supporting the spring member on a rim; this run-flat member providing resilient support for a tire in an under-inflated condition (Restriction Requirement at page 2).

In response to this contention, the Restriction Requirement fails to show where within claims 1-3 there is found a run-flat member formed from a spring steel annular member with elastic rings for supporting the spring member on a rim. The Restriction Requirement additionally fails to show where within claims 1-3 there is found the run-flat member providing resilient support for a tire in an under-inflated condition.

The Restriction Requirement further contends that the invention II is a run-flat member that is formed as an “I” or “H” shaped block that is mounted on a rim; providing a non-resilient support for a tire in an under-inflated condition (Restriction Requirement at page 2).

In response to this contention, the Restriction Requirement fails to show where within claims 4-6 there is found a run-flat member that is formed as an “I” or “H” shaped block that is mounted on a rim. The Restriction Requirement also fails to show where within claims 4-6 there is found providing a non-resilient support for a tire in an under-inflated condition.

As shown hereinabove, the Restriction Requirement fails to refer to the language found within the claims to explain why the alleged Group I lacks unity with the alleged Group II.

Instead, the Office Action of October 13, 2005 has considered claim 4 to be a claim generic to both the alleged Group I and the alleged Group II (Office Action at page 2). As a result, the Office Action indicates that claims 4-6 will be examined along with claims 1-3 (Office Action at page 2).

The consideration within the Office Action of claim 4 as being a generic claim can reasonably be construed as an admission by the Examiner of a common technical feature between claims 1-3 and claims 4-6, rendering the Restriction Requirement of July 6, 2005 improper as a result.

Accordingly, the Restriction Requirement of July 6, 2005 fails to explain why each group lacks unity with each other group. Therefore, the Restriction Requirement made by the Examiner in the Office Action of July 6, 2005 is improper at least for this reason.

Applicant requests that the Commissioner exercise his supervisory authority under 37 C.F.R. §1.144 and withdraw this improper Restriction Requirement.

No fee is believed to be required in connection with this petition.

If any fee is required or any overpayment made, the Commissioner is hereby authorized to charge the fee or credit the overpayment to Deposit Account # 18-0013.

Dated: January 13, 2006

Respectfully submitted,

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